

STATE OF MICHIGAN
COURT OF APPEALS

KEITH YOHN,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,
JULIA DONOVAN DARLOW, LAURENCE B.
DEITECH, OLIVIA P. MAYNARD, REBECCA
MCGOWAN, ANDREA FISCHER NEWMAN,
ANDREW C. RICHTER, S. MARTIN TAYLOR,
KATHERINE E. WHITE, PETER J. POLVERINI,
PAUL H. KREBSBACH, and MARK D.
SNYDER,

Defendants-Appellees.

UNPUBLISHED

March 22, 2011

No. 294135

Court of Claims

LC No. 08-000109-MZ

Before: FITZGERALD, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendants in this case involving allegations of misuse of tax funds and malicious prosecution. We affirm.

The trial court dismissed plaintiff's claim of misuse of tax funds in part because plaintiff failed to provide any legal authority in support of his claim. Plaintiff now argues that he did not need to provide such support and relies on a proposed bill providing for the appropriation of funds to allow the University of Michigan Board of Regents to establish a dental school in the mid-1870s. This Court reviews a trial court's decision to grant summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

By signing his complaint, plaintiff certified that, "[t]o the best of his . . . knowledge, information, and belief formed after reasonable inquiry, the document is . . . warranted by existing law." MCR 2.114(D)(2). Yet at the motion hearing, when asked repeatedly by the court for authority in support of his claim, plaintiff struggled to cite any authority. Indeed, at one point plaintiff stated, "There's probably no written authority that I can think of. It's just like you said, a moral thing, I guess." An appeal to morality is not recognized as binding or persuasive adjudicative authority.

Subsequently, plaintiff made reference to one case, a “*Jones v Employment*—whatever it is.” Plaintiff did not provide a citation at the time, and has not cited the case on appeal. See *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007) (“A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim.”). However, it is reasonable to presume he was referring to *Jones v Mich Employment Security Comm*, 4 Mich App 300; 144 NW2d 795 (1966), which he quoted in his brief in support of summary disposition. But *Jones* is inapposite to the present case. It discusses the definition of “misconduct connected with work” under the unemployment compensation act.¹ “Misconduct connected with work” is the title of one of the counts in plaintiff’s complaint, but *Jones* is of no value because the current case does not involve excluding unemployment benefits due to employee misconduct.

On appeal, plaintiff cites a number of cases upholding the right of a taxpayer to bring suit against a municipality for misuse of public funds. See, e.g., *Moshier v City of Romulus*, 54 Mich App 65, 67; 220 NW2d 37 (1974) (“The misuse of public funds generally affects all taxpayers and entitles one to take action against such wrongful acts, except as limited by GCR 1963, 201.2(3).”²). Even assuming that plaintiff has standing, he has failed to provide any legal authority to show that defendants have acted improperly. In fact, when pushed on the point by the court, plaintiff stated, “Then I guess the regents should have a policy for that and they don’t have one,” and then later on, “Then somebody has to change the law.” On appeal, plaintiff provides a copy of proposed legislation that became 186 PA 1875. But 186 PA 1875 only provides an appropriation for the years 1875 and 1876 to allow the University of Michigan Board of Regents to establish a dental school. The bill does not prescribe how the money is to be spent within the dental school, nor does it apply to any year after 1876.

Given the lack of supporting legal authority, recovery would be impossible even if all of plaintiff’s factual allegations were true. As such, summary disposition of plaintiff’s claim was proper under MCR 2.116(C)(8).³

Plaintiff also challenges the dismissal of his malicious prosecution claim. To establish a malicious prosecution claim, plaintiff must prove, among other things, that defendant initiated a criminal prosecution against him. *Matthews v Blue Cross and Blue Shield of Mich*, 456 Mich 365, 378; 572 NW2d 603 (1998). Plaintiff does not allege that he was ever arrested or even charged with a crime. Thus, the trial court properly granted summary disposition of the malicious prosecution claim.

Plaintiff also challenges the trial court’s award of attorney’s costs and fees to defendants, as well as the denial of plaintiff’s motion for leave to amend the complaint. However, we do not

¹ The act is now the Michigan Employment Security Act, MCL 421.1 *et seq*.

² MCR 2.201(B)(4).

³ Because we affirm the trial court’s order on this ground, we need not decide whether summary disposition was proper under MCR 2.116(C)(7) and (C)(10).

have jurisdiction over these issues. See *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991).⁴ On September 14, 2009, plaintiff filed his claim of appeal in this case from the order entered September 3, 2009, granting summary disposition in favor of defendants. The order granting attorney fees and denying leave to amend the complaint was not entered until September 21, 2009, and thus could not have been part of the original claim of appeal. “While an appeal from a final order . . . includes all prior interlocutory orders, it does not bring before the reviewing court any subsequent orders.” *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989). The September 21, 2009, order is a post judgment order and the soundness of that order is not a matter properly within the scope of this appeal.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Patrick M. Meter

⁴ *Yohn v Univ Of Michigan Regents*, unpublished order of the Court of Appeals, entered July 23, 2010 (Docket No. 294135).